IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1372 of 2005

Between:

Sri Manik Chand Jain S/o Mukund Chand Jee
Sree Mahaveer Memorial Trust R/o Indiragandhi Nagar, Main Road, Guntur

..... PETITIONER

AND

1 The Commissioner of Intermediate Education, Andhra Pradesh, Hyderabad
2 Regional Joint Director of Intermediate Education, Guntur
3 The District Vocational Educational Officer, Guntur
4 Mahaveer Memorial Junior College, rep by President, Indiragandhi Nagar, Guntur

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or direction more particularly one in the nature of Writ of mandamaus declaring that the proceedings of the first respondent in Rc. No. Admn 1-B-2/154/2004 dt 25-01-2005 is illegal, arbitrary without jurisdiction and consequently set-a side the same and pass such other order or orders.

Counsel for the Petitioner : MR. P.R.PRASAD

Counsel for the Respondents : GP FOR HIGHER EDUCATION

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.1372 OF 2005

ORDER :

The petitioner seeks a Writ of Mandamus declaring the proceedings of the first respondent – The Commissioner of Intermediate Education, Andhra Pradesh, Hyderabad, dated 25-01-2005 as arbitrary and illegal.

The petitioner is the Secretary and Correspondent of the fourth respondent College being run by Sri Mahaveer Memorial Trust (for short, 'the Trust'), Guntur. It appears that on the basis of certain alleged irregularities committed by the petitioner, the first respondent issued a show-cause notice dated 22-07-2004 calling upon the management of the Trust to show-cause as to why action should not be taken under Section 24(3)(b) of The Andhra Pradesh Education Act, 1982 (for short, 'the Act') for removal as the Secretary and Correspondent of the College. The petitioner states

that all the allegations made in the said show-cause notice are false and without any basis and therefore he submitted a detailed explanation denying the allegations and stating that the enquiry was conducted by the Regional Joint Director of Intermediate Education, Guntur behind his back and even such report was not supplied to him and therefore the proposed action of removal on the basis of the said enquiry report is unwarranted. Thereafter, the first respondent issued the impugned proceedings dated 25-01-2005 holding that the explanation of the petitioner is not satisfactory and therefore he is removed as Secretary and Correspondent of Mahaveer Memorial Junior College, Guntur. The said order is under challenge in this writ petition.

The learned Government Pleader appearing for the respondents 1 to 3 at the outset submits that against the impugned order an alternative remedy is available under Section 89 of the Act by way of Appeal and therefore the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Though the learned Counsel for the petitioner contends that since the impugned order is in violation of the principles of natural justice, the availability of alternative remedy is not a bar to exercise the jurisdiction under Article 226 of the Constitution of India, I am unable to agree.

As can be seen from the material on record, the petitioner was afforded an opportunity to explain the allegations and the impugned order has been passed only after taking into consideration the explanation offered by the petitioner. Hence, as rightly contended by the learned Government Pleader, the petitioner cannot maintain this writ petition without exhausting the alternative remedy of Appeal provided under the Statute.

Accordingly, without expressing any opinion on merits, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the alternative remedy of Appeal under Section 89 of The Andhra Pradesh Education Act, 1982.

However, keeping in view the submission of the learned Counsel for the petitioner that since the Appeal under Section 89 of the Act lies to the Government, it may not be possible to take up for consideration expeditiously, I deem it appropriate to direct that the impugned order shall not be given effect to for a period of two weeks from today so as to enable the petitioner to avail the alternative remedy under the Act.

The Writ Petition is accordingly disposed of. No costs.

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04th February, 2005.

gbs

To

1 The Commissioner of Intermediate Education, Andhra Pradesh, Hyderabad
2 Regional Joint Director of Intermediate Education, Guntur
3 The District Vocational Educational Officer, Guntur
4 Mahaveer Memorial Junior College, rep by President, Indiragandhi Nagar, Guntur

4. Two CCs to G.P. for Higher Education, High Court of AP Bldgs, Hyderabad (OUT).

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